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Case No. 570

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

LOCAL 63
TEXTILE WORKERS UNION OF AMERICA, C. I. O.
Petitioner

VS.

CHENEY BROTHERS
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT, and THE SUPERIOR COURT, HARTFORD COUNTY, CONNECTICUT

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Local 63, Textile Workers Union of America, C. I. O. prays that a writ of certiorari issue to review the decision of the Supreme Court of Errors rendered May 18, 1954, directing the Superior Court, Hartford County, to enter judgment, and affirmed on rehearing November 9, 1954.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the Superior Court of Hartford County, (R. 11) printed in Petition in case #432, Appendix B, page 14, is reported in 18 Conn. Sup. 230. The opinion of the Supreme Court of Errors (R. 213) printed in Appendix A, hereto, *infra* p. 14, is reported in 141 Conn. 606. The opinion of the Supreme Court of Errors on reargument (R. 218), printed in Appendix A, hereto, *infra*, p. 27, is reported in 141 Conn. 623.

JURISDICTION

The decision of the Supreme Court of Errors was rendered on May 18, 1954, and announced on May 25, 1954, (R. 213) Appendix A, *infra* p. 14. It involved two questions, one of which concerned a general decrease in wages for Respondent's employees, represented by Petitioner, and the other, a modification of the cost-of-living provision in Petitioner's Collective Bargaining Agreement. The Supreme Court of Errors denied Petitioner's timely motion for a rehearing filed June 12, 1954, with respect to the second question, but granted it as to one ground relating to the first question (R. 209), case ‡432, Appendix B, page 37. Petitioner filed an application for an extension of time within which to file a petition for certiorari, (which was granted by Mr. Justice Burton on July 8, 1954), in the expectation that a final decision by the Supreme Cour of Errors on the first question would be rendered in time to permit filing a single petition for certiorari covering both questions. Because of the summer recess, however, this was impossible and Petitioner on October 30, 1954, filed petition ‡432 requesting review of the action of the Supreme Court of Errors with respect to the second question, the modification of the cost-of-living clause. The instant petition is confined to a request for a review of the action of the court with respect to the first question only. Reargument was had on October 14, 1954, with respect to the question here presented. On November 9, 1954, the Supreme Court of Errors, in a three to two decision, affirmed its previous action and directed that judgment should be entered in accordance with its decision of May 18, 1954. The jurisdiction of the court rests on 28 USCA, Section 1257(3), since Petitioner claims that by the decision of the Supreme Court of Errors, it was denied due process of law and equal protection of the laws in violation of Article XIV of the Constitution of the United States.

QUESTION PRESENTED

Respondent, a manufacturer of textiles in Manchester, Connecticut, submitted for arbitration the question of whether Petitioner union should accept for the employees which it represents a reduction in pay to offset an increase granted in

March, 1951. The arbitrator handed down an award which, by its terms, was not final and definite and did not conform to the submission. The Petitioner filed an application to vacate the award with the Superior Court of Hartford County. The Respondent filed a cross application to correct the award and confirm it. The Superior Court vacated the award as being not final and definite and not conforming to the submission. The Respondent appealed to the Supreme Court of Errors which, one justice dissenting, corrected the award and confirmed it. Petitioner filed a motion for rehearing on the ground, among others, that the Supreme Court of Errors, in ignoring its previous decisions that only technical corrections could be made under the statute and making a correction affecting the merits without affording Petitioner an opportunity to present its evidence on the merits, denied Petitioner due process of law and equal protection of the laws in contravention of Section 1, Article XIV of the Constitution of the United States. The Supreme Court of Errors denied the motion for rehearing as to the ground above specified but granted rehearing on another ground. It subsequently, two justices dissenting, affirmed its previous decision.

The question presented is:

Whether a party to a labor arbitration is entitled to the protection of the due process clause and the equal protection of the law clauses of Article XIV of the Constitution of the United States when a state court of last resort, which is empowered to make only technical corrections in an award and does not have a record of the arbitration before it, exceeds its statutory powers and corrects and confirms an indefinite award.

CONSTITUTIONAL PROVISIONS

Article XIV of the Constitution of the United States, Section 1 provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTES INVOLVED

The statutes involved are Sections 8161 and 8162 of the General Statutes of Connecticut (1949 Rev.) which are printed in Petition in case #432, Appendix A, pages 13 and 14.

STATEMENT

Since 1937, Petitioner has been the duly recognized collective bargaining representative of approximately 1600 production and maintenance employees at Respondent's textile manufacturing plant in Manchester, Connecticut (R. 23). Effective March 26, 1951, the Respondent, after negotiations with the Petitioner granted a general wage increase for the hourly and piece-work employees. Hourly rate workers are compensated on the basis of a flat amount of money per hour worked, according to their respective occupations, while the wages of a piece-rate worker are determined by the number of units produced by him per unit of time. The general wage increase was translated into the wage system as follows:

1. "Base rates" for piece workers were increased in a manner designed to produce an average increase of 8.1 cents per hour. This affected approximately 750 employees. (Finding 13, R. 24).

2. The "hiring rate"[1] was increased 6 cents an hour, from $.94 to $1.00. This affected 10 employees. (Finding 14, R. 24).

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[1] New and inexperienced employees are paid at an hourly rate called the "hiring minimum" for a beginning period of not more than six weeks, after which the lowest wage which any production or maintenance employee (whether hourly rate or piece rate) can receive is a somewhat higher hourly rate called the "plant minimum" rate. (Finding 6, R. 24).

3. The "minimum rate" was increased 5 cents an hour, from $1.10 to $1.15. This affected about 40 employees. (Findng 15, R. 25).

4. Certain hourly workers were increased 9.75 cents an hour. This affected approximately 850 employees. (Finding 16, R. 25).

5. About 20 engravers received no increase. (See Finding 42, R. 30).

On September 17, 1952, Respondent proposed a wage reduction to offset an increase granted in March, 1951. The Petitioner refused. The Respondent then requested Petitioner to join in submission of the dispute to arbitration under the contract but the Petitioner declined (Finding 25, R. 27). Respondent submitted a request for arbitration to the American Arbitration Association which, insofar as is here pertinent, was as follows:

"On September 17, 1952, the company asked the union to agree to the following modification in the company's basic rates of pay per unit of time.

"1. A direct wage decrease of 9¾ cents per hour for all employees covered by the current agreement, to offset the wage increase which became effective on March 26, 195[1]." (Finding 27, R. 28).

On December 31, 1952, after a hearing at which the Respondent, but not Petitioner, was represented by counsel, the arbitrator made his award in the following terms (Finding 36, R. 29).

"(1) Beginning with the first payroll period which commences after December 31, 1952, all hourly rates and base rates shall be reduced by 9.75 cents. Piece rates and plant hiring minimum rates shall be adjusted accordingly."

The award did not conform to the submission in that it did not restrict the reduction to offsetting in whole, or in part, the March, 1951 increase but ordered a flat 9.75 cents decrease which would result in a reduction greater than the March, 1951 increase for over half of Respondent's employees, (Finding 40, R. 29).[2] The terms "hourly rates", and "base rates", "piece rates", "plant minimum rates", "hiring minimum rates", as used by Respondent in its wage structure were not explained to the arbitrator. Similar terms and other terms used by Respondent in its wage structure were not explained to the arbitrator at the arbitration hearing (Finding 32, R. 28).

After the award was received, the parties met to consider it and the discussion indicated uncertainty in the minds of both parties as to the meaning of the award. The Respondent suggested that Petitioner seek an interpretation of the meaning from the arbitrator, but the Petitioner did not accept the suggestion (Finding 48, R. 31). The time within which the arbitrator could modify his decision had expired. Effective January 5, 1953, Respondent, disregarding the reduction directed by the award, placed in effect reductions which offset the March, 1951 increase (Findings 42, 44, R. 30, 31).

On January 15, 1953, Petitioner filed an application to the Superior Court of Hartford County to vacate the award under Section 8161(d) of the General Statutes of Connecticut (1949 Rev.) on the grounds that the arbitrator had exceeded his powers and so imperfectly executed them that a mutual, final

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[2] 1. In March, 1951, "base rates" for "piece workers" were increased in a manner designed to produce an average increase of 8.1 cents per hour. A reduction of 9.75 cents per hour in "base rates" as that term is used in Respondent's wage structure would result an average reduction of substantially 11.7 cents per hour in actual piece rate earnings decreasing the earnings of 750 employees 3.6 cents per hour below the pre-March, 1951 level (R. 30).

2. The "plant minimum rate" was increased in March, 1951 from $1.10 an hour to $1.15 an hour. A decrease of 9¾ cents per hour would result in a 4¾ cents below the March, 1951 rate for 40 employees (R. 25).

3. In March, 1951, the "hiring rate" was increased from $.94 cents per hour to $1. A reduction of 9¾ cents per hour would result in a decrease of 3¾ cents per hour below the March, 1951 level for 10 employees (R. 24, 30).

and definite award upon the subject matter was not made.[3] Respondent filed a cross application asking that the award be corrected under Section 8162(b) and (c) of the statutes.[4]

An application to vacate or modify an arbitration award is not an ordinary civil action with all issues before the court for determination. Under the Connecticut Arbitration statute, the scope of judicial review is strictly limited. Section 8161 provides that in certain specified situations the court shall vacate an award. This section reads in pertinent part:

> "In any of the following cases the superior court of the county in which one of the parties resides*** shall make an order vacating the award upon the application of any party to the arbitration;*** (d) if the arbitrators shall have exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject-matter submitted was not made.***"

Section 8162 provides in pertinent part:

> "For any of the following causes the superior court of the county in which one of the parties resides***, shall make

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[3] An application to vacate or modify an award must be made within thirty days from the notice of the award, Sec. 8163, General Statutes of Connecticut (1949 Rev.). If no order vacating or modifying an award is made a party may make application to confirm the award any time within one year after the award is rendered. Sec. 8160 of the General Statutes of Connecticut (1949 Rev.)

[4] The cross application alleged:

"6. Notwithstanding the intent of said award as hereinabove alleged, paragraph 1 thereof is imperfect, in that said paragraph might be construed to order a reduction of 9.75 cents per hour in all base rates, without regard to the principles used in computing and applying the aforesaid increase; and in that respect, to the extent, if any, that such award so construed affects the merits of the controversy, the same is an award on a matter not submitted to the arbitrator, and for the rest is imperfect in form on a matter not affecting the merits.

"7. An order by this court, correcting paragraph 1 of said award so that the same authorizes, effective with the first payroll period commencing after December 31, 1952, decreases in the aforesaid direct wages equivalent to, and computed and applied in accordance with the principles already used in computing and applying, the aforesaid increases granted as of March 26, 1951, will effect the intent of said award and promote justice between the parties." (R. 8).

an order modifying or correcting the award upon the application of any party to the arbitration:*** (b) if the arbitrators shall have awarded upon a matter not submitted to them unless it be a matter not affecting the merits of the decision upon the matters submitted; (c) if the award shall be imperfect in matter of form not affecting the merits of the controversy. The order shall modify and correct the award, so as to effect the intent thereof and promote justice between the parties".

The statute provides a summary procedure for hearing the application. Section 8163.

The Supreme Court of Errors held in the case of *Pratt Read & Co. v. United Furniture Workers*, 136 Conn. 205, 208, 70 Atl. 2d. 120, that Section 8162 is procedural and authorizes the court to make only technical corrections and that it does not empower the court to make corrections which affect the merits.

At the trial the Respondent contended that the opinion of the arbitrator filed with the award, was part of the award and that construed together, they were final and definite (Finding 73, 76, R. 37) and that in any event the only appropriate relief would be a modification of the terms of the award under Section 8162. It was conceded that the award by its terms did not conform to the submission.

The trial court, after hearing, held that the opinion was not part of the award (Conclusion 57, R. 32). It found that the award did not conform to the submission (Finding 53, R. 32) and that the award was not a final and definite answer to the real question at issue when it directed "all hourly rates and base rates shall be reduced by 9.75 cents. Piece rates and plant rates shall be adjusted accordingly." (Finding 52, R. 32). Acting under the directive of the statute as interpreted by the Supreme Court of Errors in the *Pratt Read* case, *supra*, the court vacated the award.

Respondent appealed to the Supreme Court of Errors. That Court, in a four-to-one decision, reversed the trial court.

It "corrected" the award by striking therefrom the words "and base rates" and confirmed the award as corrected. As stated by Mr. Justice O'Sullivan in the minority opinion, Appendix A, *infra*, p. 25.

> "The majority have ordered the court to render a judgment which will incorporate the following corrected paragraph in the award:
>
> > '1. Beginning with the first payroll period which commences after December 31, 1952, all hourly rates shall be reduced by 9.75 cents. *Piece rates and plant hiring minimum rates shall be adjusted accordingly.*'
>
> "The majority do not direct the court to state in the judgment how the second sentence, which I have italicized for emphasis, is to be carried out, since there is nothing in the award to inform the reader what method the arbitrator had in mind. Indeed, the second sentence provides one of the unsolved mysteries of the case. Undoubtedly the arbitrator knew what he meant by the language he used but it is conceded that nobody else did.
>
> * * * * *
>
> "The majority now direct the court to ripen this meaningless award into a judgment, without giving any clue as to how the piece rates and plant hiring minimum rates can be determined. It seems to me that in the light of the foregoing discussion the award, now to be altered into a judgment, cannot be characterized either as final, complete or definitive.***"

Petitioner on June 12, 1954, filed a Motion for Reargument on seven grounds, five of which related to the question of the general decrease. (Appendix B, case #432, page 37, R. 209). The motion was denied except as to paragraph 1 (R. 212 Appendix B, case #432, page 40). On November 9, 1954, the Supreme Court of Errors, in a three-to-two decision, affirmed its previous action.

The Supreme Court of Errors ignored the limitation of the arbitration statute; it ignored its previous decisions interpreting the statute; and, without a record of the arbitration proceedings before it,[5] corrected an ambiguous award and confirmed it. Petitioner contends that by so doing, the court exceeded its authority and deprived Petitioner of due process of law and equal protection of the laws in contravention of Section 1, Article XIV of the Constitution of the United States.

HOW FEDERAL QUESTION PRESENTED

On June 12, 1954, Petitioner filed a timely motion for reargument (R. 209 Appendix B, case #432 pp. 39, 40) the seventh ground of which is as follows:

"7. Defendant appellant in the trial court and on its appeal to this Court, both in its brief and oral argument, argued the merits of the issues submitted to the arbitrator for determination. It presented to this Court matters bearing on the merits that were either excluded by the lower court or not offered. Plaintiff-appellee believing itself bound by the statute and the previous decisions of this Court to the effect that the Court is empowered to make only technical corrections in arbitrators' awards refrained from presenting its case on the merits and the equitable considerations in its favor. The Court in overruling its previous decisions that only technical corrections could be made under the statute and making a determination affecting the merits without affording Plaintiff an opportunity to present its evidence on the merits, make its arguments and point out the equitable considerations in its favor deprived Plaintiff of due process of law and denied to it equal protection of the laws in violation of Article XIV of the Constitution of the United States of America."

On June 16, 1954, the Supreme Court of Errors granted the Motion for Reargument as to the first ground but denied

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[5] The record of the arbitration proceedings was not received in evidence (R. 33-37).

it as to all others. Reargument was had and the court affirmed its previous decision, two justices dissenting.

The decision of the Supreme Court of Errors was unexpected. The Petitioner had no opportunity prior to its motion for reargument to raise the question as it could not have anticipated the court's action. Mr. Justice O'Sullivan stated in the minority opinion:

> "The result reached by the majority is as stunning as it is incredible. Legal principles which this court has carefully developed for over a century in order to further the cause of arbitration have been summarily swept aside after receiving casual lip service and have then been ignored as completely as if they never existed." (Appendix A, *infra* p. 24.)"

Petitioner contends that the following cases sustain said jurisdiction:

Saunders v. Shaw, 244 U. S. 317, 320.

Great Northern R. Co. v. Sunburst Oil Co., 287 U. S. 358, 366-7.

Brinkerhoff-Faris Trust Co. v. Hill, 281 U. S. 673, 677-8.

Lutcher & Moore Lumber Co. v. Knight, 217 U. S. 257,264.

Missouri ex rel Missouri Ins. Co. v. Gehner, 281 U. S. 313, 320.

Cole v. Arkansas, 333 U. S. 196, 200.

REASONS FOR GRANTING WRIT

Arbitration plays an important role not only in the field of labor management relations but in the settlement of many different types of controversies. Each year, in Connecticut alone, many thousands of matters are referred to arbitrators for determination in order to obtain speedy and inexpensive disposition, especially in situations where specialized or technical problems are involved. Under the Connecticut Arbi-

tration Statute, Ch. 398 of the General Statutes of Connecticut (Rev. 1949), the function of the courts is strictly confined. Section 8161 of the statutes directs the court, upon application by a party in certain specified situations where, as here, the award is not final and definite, to vacate the award. Under Section 8162 the court may make technical corrections which do not affect the merits of the controversy.

The courts are not empowered to correct ambiguous awards. Nor are they empowered to interpret ambiguous awards to be in conformity to the submission. To do so violates the basic rule of law that a court may not substitute its judgment for that of the arbitrator. The reason for this rule is that the court does not have the controversy before it for determination. It has not heard the evidence nor the argument. It does not have the record of the arbitration hearing before it. In this respect an application to vacate or correct an arbitration award differs radically from a civil action at law or in equity. The arbitrator is a layman usually chosen because of his expert knowledge in the field of the controversy. It is his decision to which the parties have bound themselves to submit, not the court's decision based upon what it believes the arbitrator meant. It is the duty of the court to confirm, vacate or correct an award as it stands. It is not the court's function to go beyond the award itself and search for the arbitrator's meaning from evidence *aliunde*. If it does so, it must of necessity guess at the facts and the equities.

The question of whether a party to an arbitration award is entitled to the protection of the 14th Amendment in a situation where a court exceeds its statutory authority is of vital and far-reaching importance in the field of arbitration.

In the instant case, the finding of the trial court that the award was not final and definite was not impeached. (Finding 52, R. 32, Majority Opinion, Appendix A, *infra*, p. 15). The Supreme Court of Errors stated in the Majority Opinion that the arbitrator's meaning when he speaks of "base rates" is uncertain, (Majority Opinion, Appendix A, *infra*, p. 20) because its meaning was not explained to him. Neither was the

meaning of the other terms used in the award explained to the arbitrator (Finding 32, R. 28). After "correcting" the award, the court proceeds to interpret it to conform to the submission. The decision of the Supreme Court of Errors constitutes a holding that it has the power in any case, in its absolute discretion, to correct and interpret an award to conform to the submission. The impact of such a decision is obvious. If allowed to stand, it undermines the entire structure of arbitration.

It is respectfully submitted that the Supreme Court of Errors of the State of Connecticut so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Date of Supreme Court Judgment, May 18, 1954

Decision Announced, May 25, 1954

OPINION SUPREME COURT OF ERRORS

LOCAL 63, TEXTILE WORKERS UNION OF AMERICA,

C. I. O. *v.* CHENEY BROTHERS

Application to vacate an arbitration award, and for other relief, brought to the Superior Court in Hartford County, where the defendant filed an application to correct the award and the issues were tried to the court, *Alcorn, J.;* judgment vacating the award and appeal by the defendant. *Error; judgment directed.*

Wesley A. Sturges, with whom were *Pomeroy Day* and *William K. Cole,* for the appellant (defendant).

A. A. Ribicoff, with whom was *Louise H. Hunt,* for the appellee (plaintiff).

INGLIS, C. J. The judicial phase of the controversy between the parties to this appeal bgan on January 15, 1953, when the plaintiff, acting under §8161 (d) of the General Statutes, applied to the Superior Court to vacate an arbitration award rendered against it and in favor of the defendant. The latter filed an answer and a cross application in which correction and confirmation of the award, as corrected, were sought. The court decided that the award ought to be vacated. From the judgment entered thereon the defendant has appealed.

The finding, which is not subject to correction, recites the following facts: For many years, the defendant, hereinafter called the company, has operated a textile plant in Manchester and, since 1937, has recognized the plaintiff, hereinafter called the union, as the bargaining representative of its production and maintenance employees. Long-term agreements affecting the labor relations of the parties were successively concluded by them as of March 30, 1942, August 1, 1947, and August 1, 1952. All three agreements contained a provision permitting either party at any time to reopen the question of wages and to seek a revision of the previously established rates. It was further provided that, if the union objected to any request by the company for a reduction in wages, the differences between the parties were to be resolved by proceedings culminating, when necessary, in arbitration under the industrial arbitration rules of the American Arbitration Association.

On March 26, 1951, as a result of negotiations between the parties, the company gave a general wage increase to about 1600 employees. The increase did not affect about twenty engravers. The hourly rate employees, that is, those compensated on the basis of a definite amount of money for each hour worked, were now to receive a flat 9.75 cents an hour more. The rates of pay for all other employees except engravers were then computed so as to give them an increase comparable to the 9.75 cents per hour. Since the wages of pieceworkers were determined, not by the number of hours worked, but by the number of units produced during a given unit of time, the fixing of the many thousands of piece rates prevailing in the plant to conform to the increase of 9.75 cents in the hourly rate had to be done by intricate mathematical computation. The upshot of the wage increase of March 26, 1951, was as follows: (1) Hourly rate employees, totaling 850, were to receive 9.75 cents an hour more; (2) 20 engravers were to get no additional pay; (3) "base rates" for pieceworkers, totaling 750, were fixed at an amount which would produce an average increase of 8.1 cents an hour; (4) the "hiring rate" was increased 6 cents an hour and affected 10 employees; (5)

the "minimum rate"[1] was increased 5 cents an hour and affected 40 employees. The increases thus granted represented an estimated average of 9.75 cents per hour for all the employees affected. In actuality, many received more and many less than this average. As a result of the various computations, however, the over-all increase described as 9.75 cents per hour was considered to be approximated for all employees involved.

As of the date the wage increase became effective, the parties incorporated into their bargaining agreement a cost-of-living "escalator" clause. A 1 cent quarterly wage adjustment, up or down, was automatically to follow every change of 1.153 points in the consumer price index of the United States bureau of labor statistics, but no adjustment which would reduce the rates of pay below those which were effective on March 26, 1951, was to be made through this process.

On September 17, 1952, the company proposed (1) a wage reduction to offset the increase granted on March 26, 1951, and (2) a revision of the escalator clause. Both proposals were rejected. The company then asked the union to join in submitting the dispute to arbitration under the agreement, but the union refused to do so. On October 10, 1952, the company forwarded a written request for arbitration to the American Arbitration Association and sent a copy thereof to the union. The request was for the arbitration of two matters, expressed by the company in the following language:

"1. A direct wage decrease of 9¾ cents per hour for all employees covered by the current agreement, to offset the wage increase which became effective on March 26, 1951.

"2. Revision of our cost of living formula (Section 9 of the current agreement) by providing for adjustment upon each change of 1.32 points in the applicable index instead of 1.153 points."

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[1] New and inexperienced employees were paid at an hourly rate called the "hiring minimum" for a beginning period of not more than six weeks, after which the lowest wage that any production or maintenance employee (whether on an hourly or piece rate) could receive was a somewhat higher hourly rate called the "plant minimum" rate.

In conformity with its rules, the American Arbitration Association selected an arbitrator who, on November 25 and 26, 1952, held hearings in which both the company and the union participated. At these hearings the arbitrator was not advised of the meaning of "hourly rates," "base rates," "piece rates," "plant minimum rates" and "hiring minimum rates," as those expressions were used by the company in its wage structure, nor was he told of the method by which the wage increase of March 26, 1951, was computed and fixed for the various types of wage earners.

On December 28, 1952, the arbitrator made the following award:

"1. Beginning with the first payroll period which commences after December 31, 1952, all hourly rates and base rates shall be reduced by 9.75 cents. Piece rates and plant hiring minimum rates shall be adjusted accordingly.

"2. Beginning with the first payroll period which commences after December 31, 1952, Section 9 of the collective bargaining agreement between the parties dated August 1, 1952 shall be modified so as to provide for a 1 cent cost-of-living adjustment for every 1.32 index points' change in the U. S. Bureau of Labor Statistics Consumers' Price Index for Moderate Income Families in Large Cities. Old Series. The February 1951 Index of 184.2 shall continue to be used as the starting point in calculating changes in the cost of living. The effect of this will be to reduce the Cost Of Living Allowance payable for the current quarter from 7 cents to 6 cents per hour."

Although the rules of the arbitration permitted but did not require it, the arbitrator delivered with the award, and stapled to it, a twenty-two page opinion. As directed in the first paragraph of the award, a reduction of 9.75 cents an hour in all "base rates," as that expression is used and applied in the company's wage system, would result in an average decrease of substantially 11.7 cents per hour in the actual earnings of pieceworkers. This decrease would affect 750 em-

ployees. Certain other facts found by the court will be mentioned when the legal claims advanced by the parties are discussed.

The problems presented by this appeal readily group themselves into two main divisions, of which one deals exclusively with the first, and the other with the second, paragraph of the award. The court concluded that the former was void because it went beyond the submission and, in any event, because it was not a final and definite answer to the question to which it purported to respond.

Early in our judicial history we expressed the view that, since arbitration is designed to prevent litigation, it commands much favor from the law. *Parmelee v. Allen*, 32 Conn, 115, 116; see *Mallory v. Town of Huntington*, 64 Conn. 88, 95, 29 A. 245. Especially is it to be encouraged as a means of promoting tranquility and the prompt and equitable settlement of disputes in the field of labor relations. *Colt's Industrial Union v. Colt's Mfg. Co.*, 137 Conn. 305, 309, 77 A.2d 301. It is true, however, that the submission should set forth the questions to be resolved in such a manner as to show clearly what disputes are to be arbitrated. *International Brotherhood of Teamsters v. Shapiro*, 138 Conn. 57, 68, 82 A.2d 345. Clarity is important because the source of the arbitrator's authority is found in the agreement of submission. "The charter of an arbitrator is the submission and no matter outside the submission may be included in the award. *Palmer v. Green*, 6 Conn. 14, 18; *Hamlin v. Norwich*, 40 Conn. 13, 23; *Schoolnick v. Finman*, 108 Conn. 478, 481, 144 A. 41; Sturges, Commercial Arbitrations & Awards, pp. 144, 229; Russell, Arbitration & Award (13th Ed.) pp. 201, 210, 211." *Pratt, Read & Co. v. United Furniture Workers*, 136 Conn. 205, 208, 70 A.2d 120.

It necessarily follows that an award must conform to the submission. *Chase Brass & Copper Co. v. Chase Brass & Copper Workers Union*, 139 Conn. 591, 594, 96 A.2d 209; *Continental Milling & Feed Co. v. Doughnut Corporation*, 186 Md. 669, 677, 48 A.2d 447; *Baldwin v. Moses*, 319 Mass. 401, 402, 66N.E.2d 24; 6 Williston, Contracts (Rev. Ed.) §1929. Ordin-

arily, an award which does not respond to the submission cannot be upheld. *Blackstone Valley Gas & Electric Co. v. Rhode Island Power Transmission Co.* 64 R.I. 204, 223, 12 A.2d 739; *Pumphrey v. Pumphrey*, 172 Md. 323, 325, 191 A. 235. It is void to the extent which it is outside the submission. *Matter of Marchant v. Mead-Morrison Mfg. Co.*, 252 N.Y. 284, 301, 169 N.E. 386. To that extent the award must be vacated by the Superior Court upon proper application. General Statutes §8161 (d).

On the other hand, if part of an award is within the submission and part of it is not, the former may be sustained and the latter rejected if the two can be separated without doing an injustice. *Parmelee v. Allen*, 32 Conn. 115, 116; *Moore v. Luckess' Next of Kin*, 64 Va. 160, 171; *Moyer v. Van-Dye-Way Corporation*, 126 F.2d 339, 341; 6 Williston, Contracts (Rev. Ed.) p. 5395; Sturges, Commercial Arbitrations & Awards, §226; 3 Am. Jur. 957; 6 C.J.S. 234; see *Dutton v. Gillet*, 5 Conn. 172, 175 n. In accord with this principle, §8162 of the General Statutes provides that the Superior Court may modify or correct an award "(b) if the arbitrators shall have awarded upon a matter not submitted to them unless it be a matter not affecting the merits of the decision upon the matters submitted. . . The order shall modify and correct the award, so as to effect the intent thereof and promote justice between the parties." The use of the word "unless" in this portion of the statute is confusing, but obviously the intendment of the enactment is that the court may strike out such portion of an award as is not responsive to the submssion if, by so doing, the merits of the portion of the award which is within the submission are not affected.

We will first apply the principles of law which we have just recognized to the question whether the award made upon the first paragraph of the submission should be corrected and, as corrected, sustained. The submission itself is inartificially drafted. It does not necessarily follow, however, that it is insufficient to form the basis of an award. *Matter of Hub Industries (George Mfg. Corporation)*, 183 Misc. 767, 769, 54 N.Y. S.2d 106, modified, 269 App. Div. 177, 54 N.Y.S.2d 741, aff'd,

294 N.Y. 897, 63 N.E.2d 28. It sets forth with reasonable clarity that the gist of the question to be arbitrated is whether there should be such an adjustment in the wage scale of the defendant as would offset the wage increase of March 26, 1951. It is true that it indicates that such an adjustment may be accomplished by a direct decrease of 9.75 cents per hour for all employees. This latter portion of the submission, if taken literally, is inconsistent with the former. As has already been shown, if the pieceworkers, the employees on the hiring rate and those on the plant minimum rate were all reduced by 9.75 cents per hour, their wages would be less than they were prior to March 26, 1951. When, however, it is borne in mind that the raises granted in 1951 were all computed by starting with a raise of 9.75 cents per hour for the hourly employees, it becomes clear that there is no inconsistency between the two concepts expressed in the first paragraph of the submission. A reduction of 9.75 cents per hour in the hourly rates paid would come to the same end as a reversion to the wage structure as it was prior to March 26, 1951, if the reduction in the hourly rates is taken as a base for the computation of the reduction in the pay of those workers not on an hourly basis, just as an increase of 9.75 cents an hour for the hourly workers was taken as a base for the increase in the pay of all other workers on March 26, 1951. We therefore repeat that the question submitted to the arbitrator was whether the wage increase of March 26, 1951, should be offset by a basic reduction of 9.75 cents per hour, from which basic reduction the actual reduction of the pay of each employee could be computed by adjustment.

The next question is whether the award is within the submission. In one particular it is not. The arbitrator decided that not only hourly rates but also "base rates" should be reduced by 9.75 cents. In the submission nothing was said concerning base rates. Indeed, it is found by the trial court that nothing was said about any such rates in the course of the hearings before the abitrator. Just what the arbitrator meant by his reference to "base rates" is, therefore, uncertain. However that may be, the bald fact is that any award which the arbitrator attempted to make concerning base rates was entirely outside of the submission. Consequently, under §8162

(b) and the authorities cited above, the award should be modified by striking therefrom all reference to "base rates" if that can be done without affecting the merits of the balance of the award or doing an injustice to the parties.

If the words "and base rates" are stricken from the award, there is left an adjudication that all hourly rates shall be reduced 9.75 cents, and piece rates and plant hiring minimum rates adjusted accordingly. This adjudication is a complete and reasonably definitive award. See *Brown v. Wheeler*, 17 Conn. 345, 352. The phrase "plant hiring minimum rates" in the award is clearly intended to embrace both hiring rates and plant minimum rates. When so interpreted, the award covers the pay of all classes of the defendant's employees except engravers. The effect of it is to direct a reduction in the pay of hourly workers by 9.75 cents per hour and a corresponding reduction in the pay of pieceworkers, employees who are on the hiring pay basis and employees who are receiving the plant minimum wage. The reduction in the pay of the last three groups is not to be 9.75 cents per hour; it is to be a reduction computed so that it will be equivalent to a reduction of 9.75 cents per hour in the pay of hourly workers. In effect, therefore, the award is that the pay of each of these four classes of employees shall be reduced by an amount that will offset the increases they received as of March 26, 1951.

So far as the engravers are concerned, there is nothing specifically said about them in the submission. Inasmuch as the crux of the submission was the question whether the increases in pay of March 26, 1951, should be offset and inasmuch as the engravers received no increase at that time, it cannot fairly be said that any question concerning their pay was involved in the submission. It follows that nothing in the award can be interpreted as an order for a reduction of their pay.

Thus it appears that the award without the words "and base rates" is a complete award answering the question submitted in the affirmative. It is also clear that inasmuch as no consideration of base rates, whatever they may be, was had

on the hearing, the removal of all reference to them from the award cannot affect the merits of the decision of the arbitrator concerning the reduction in the pay of the four classes of employees covered by the award. The trial court was, therefore, in error in refusing to correct the award by removing from it the reference to base rates. When so corrected, the award would have been within the submission.

We next consider the second ground upon which the trial court concluded that the first paragraph of the award should be vacated, i.e., that the award lacks finality and definiteness. It is true that an award must be final as to the matters submitted so that the rights and obligations of the parties may be definitely fixed. *Carter v. Ross*, 2 Root 507, 508; *Parkhurst v. Powers*, 2 Root 531; *Mercury Oil Refining Co. v. Oil Workers International Union*, 187 F.2d 980, 982; *McInnish v. Lanier*, 215 Ala. 87, 109 So. 377; *LeBlanc v. Beard Paper Co.*, 320 Mich. 632, 641, 32 N.W.2d 73; *Park Construction Co. v. Independent School District*, 216 Minn. 27, 33, 11 N.W.2d 649; *Matter of Pfeiffer, Inc.*, 222 App. Div. 62, 63, 225 N.Y.S. 294, aff'd, 251 N.Y. 508, 168 N.E. 407; *Maw v. Kitzman*, 55 N.D. 463, 467, 214 N.W. 273; 6 Williston, Contracts (Rev. Ed.) p. 5397; 3 Am. Jur. 947, §125. As has been pointed out, however, the award in the present case is definitive. It does not in detail fix the pay of employees individually. It does, nevertheless, as we have interpreted it, establish the method by which each individual's pay may be fixed. It determines the principle by which the pay of each of the four classes of employees is to be computed. That is, it decides that all employees shall take a reduction of pay which is the equivalent of a reduction of 9.75 cents per hour to hourly employees. When read in connection with the submission, it means nothing more nor less than that the pay of each class shall be reduced to what it was before March 26, 1951. Under the circumstances, an award could hardly be more definitive and enforceable than that. When confirmed, it will have an effect closely akin to that of a declaratory judgment.

There remains for consideration the award embraced in paragraph 2, namely, the change in the cost-of-living formula.

In its complaint, the union alleged that this part of the award should be nullified not only because it went beyond the submission but also because the escalator clause was not subject to arbitration unless the parties expressly so agreed. The court refused to pass upon the latter claim but vacated the award on the ground of the former.

That the arbitrator went beyond the submission is clear. Instead of limiting himself to deciding whether the cost-of-living formula should provide for adjustment upon a change of 1.32 points in the index rather than 1.153 points, he undertook, after answering that question affirmatively, to apply the formula to the wage scale. This part of the award presented the ground upon which the court acted. As has been pointed out, when an arbitrator exceeds his authority, the award is void only to the extent that he does so, if the part which is void can be separated from the rest without injustice and without affecting the merits of the part of the award which is within the submission. The award set forth in paragraph 2 is one in which the good can readily be separated from the bad with justice to both parties. The valid part of the award is that which raises the required change in index points to 1.32 beginning with the first pay-roll period which commences after December 31, 1952. The arbitrator's notion of how the new formula should apply can readily be nullified without injustice to anyone. For this reason, the court was in error in vacating the entire award in paragraph 2. The award should have been corrected by striking therefrom all of the language except the following: "Beginning with the first payroll period which commences after December 31, 1952, Section 9 of the collective bargaining agreement between the parties dated August 1, 1952 shall be modified so as to provide for a 1 cent cost-of-living adjustment for every 1.32 index points' change in the U. S. Bureau of Labor Statistics Consumers' Price Index for Moderate Income Families in Large Cities, Old Series." Judgment should enter confirming the award as thus corrected.

There is no merit to the union's claim, alleged in its complaint, that the question of a modification of the escalator clause was not arbitrable. Section 12(B) of the bargaining

agreement provides that differences arising between the company and the union as to the meaning and application of the provisions of their agreement, or "in regard to any other maters," shall be settled by a procedure which leads, when necessary to arbitration; and §15 of the agreement expressly provides that either party may seek a modification of any provision at any time.

There is error, the judgment is set aside and the case is remanded with direction to render judgment modifying and correcting the award as indicated in this opinion and confirming the award as so modified.

In this opinion WYNN, DALY, *and* MOLLOY, Js., concurred.

O'SULLIVAN, J. (dissenting). The result reached by the majority is as stunning as it is incredible. Legal principles which this court has carefully developed for over a century in order to further the cause of arbitration have been summarily swept aside after receiving casual lip service and have then been ignored as completely as if they never existed.

The modern judicial attitude toward arbitration is that its use should be encouraged. *International Brotherhood of Teamsters v. Shapiro*, 138 Conn. 57, 68, 82 A.2d 345. But however sympathetic the law may be toward this method of terminating controversies, arbitration must be carried out, not in some haphazard fashion suiting the fancy of the parties or the arbitrators, but pursuant to recognized rules of long standing. The need for adherence to legal principles is particularly apparent in those cases where, as here, one of the parties is seeking to convert an award into a judgment.

My disagreement with the majority is limited to the phase of the award, covered by paragraph 1, which deals with a proposed reduction in pay. My dissent is based on three grounds.

First, the award was void since it went beyond the terms of the submission. *Chase Brass & Copper Co. v. Chase Brass & Copper Workers Union*, 139 Conn. 591, 594, 96 A.2d 209.

It is, of course, true that when an arbitrator acts partly within and partly beyond the authority derived from the submission, only so much of the award is void as lacks authority to support it, provided the part which is void can be separated from the rest without injustice. 6 Williston, Contracts (Rev. Ed.) p. 5395; Sturges, Commercial Arbitration & Awards, §226; 3 Am. Jur. 957; 6 C.J.S. 234; see *Dutton v. Gillet*, 5 Conn. 172, 175 n. The award in the case at bar is so worded that it is legally impossible to separate the valid from the void. Thus, if so much of it is upheld as reduces the hourly rates by 9.75 cents, one is confronted by the fact that there is nothing in the award, as I shall later point out, which warrants the reduction in piece rates. The injustice, then, is that one half of the employees are reduced in pay by almost ten cents an hour while the pay of the other half remains unaffected. Like the Gordian knot, the award is incapable of being untied so that the good may be isolated from the bad. Both are inextricably bound together, and they cannot be separated by the use of a legal meat ax.

Second, the award cannot be corrected, since the merits of the controversy would be affected. *Pratt, Read & Co. v. United Furniture Workers*, 136 Conn. 205, 208, 70 A.2d 120; General Statutes §8162.

Third, the award, whether viewed in its original or in its corrected form, lacks finality and definitude. Certainty is an indispensible requirement of a legal award. If it is deficient in this respect, it cannot be upheld. It must leave no loophole for future dispute on the matter submitted. See 3 Am. Jur. 947 §125. "It is essential to the validity of an award that it be final, that is, a termination of the question under arbitration, . . and be capable of being made the subject of a judgment or decree. Further, the award must be certain in the sense that no reasonable question can be made as to its meaning." 6 Williston, op. cit., p. 5397.

The majority have ordered the court to render a judgment which will incorporate the following corrected paragraph in the award:

"1. Beginning with the first payroll period which commences after December 31, 1952, all hourly rates shall be reduced by 9.75 cents. *Piece rates and plant hiring minimum rates shall be adjusted accordingly.*"

The majority do not direct the court to state in the judgment how the second sentence, which I have italicized for emphasis, is to be carried out, since there is nothing in the award to inform the reader what method the arbitrator had in mind. Indeed, the second sentence provides one of the unsolved mysteries of the case. Undoubtedly the arbitrator knew what he meant by the language he used but it is conceded that nobody else did.

For example, after receiving the award, the defendant, apparently not comprehending what the arbitrator had decided, conferred with the plaintiff and proposed that the award be determined to mean the following: "1. The hiring rate would be reduced from $1.00 per hour to $.94 per hour, the rate in effect prior to the March 26, 1951 increase. 2. The minimum rate would be reduced from $1.15 per hour to $1.10 per hour, the rate in effect prior to the March 26, 1951 increase. 3. Employees who are on minimum rate jobs, that is, who are receiving $1.15 per hour will be reduced 5c per hour. 4. Employees who were receiving the plant minimum of $1.10 prior to March 26, 1951 were increased $0.0975 as of that date, therefore, they will be reduced by the same amount. 5. Hourly rate workers other than those mentioned above will be reduced by $0.0975 per hour and new hourly rates will be issued not later than January 8, 1953 for all employees on the hourly rate basis. 6. For pieceworkers, there will be $0.0975 per hour deducted from the piecework earnings of each employee until the Timestudy-Standards Division has time to issue new piece rates which, it is expected, will be completed in time to use on March 2, 1953. 7. Piecework base rates would revert to the same base rates as were in effect prior to the March 26, 1951 increase. . . ."

It further developed, as the finding shows, that when the defendant was unable to convince the plaintiff that the parties

should agree to these seven propositions as determinative of what the award meant, the defendant suggested that the plaintiff go to the arbitrator to obtain his interpretation of the award. Needless to say, the suggestion was ignored.

The majority now direct the court to ripen this meaningless award into a judgment, without giving any clue as to how the piece rates and plant hiring minimum rates can be determined. It seems to me that in the light of the foregoing discussion the award, now to be altered into a judgment, cannot be characterized either as final, complete or definitive.

For the foregoing reasons, I cannot agree wih the majority.

MEMORANDUM ON REARGUMENT

INGLIS, C. J. Reargument in this case was granted but was limited to the first ground stated in the motion. That ground reads:

> "The court in construing the submission did not take into consideration the fact that employees receiving the plant 'minimum rate' were paid on a flat hourly basis and received an increase in March, 1951 of only five cents per hour; that those employees receiving the 'hiring rate' were paid on a flat hourly basis and received an increase in March, 1951 of only six cents per hour and that, therefore, a reduction of 9.75 cents an hour in the hourly rates paid, which include those receiving the plant minimum rate and the hiring rate would not come to the same as a reversion to the wage structure as it was prior to March 26, 1951. Thus the basic premise on which the court's decision rests is erroneous."

In the original opinion, we pointed out that the nub of the question submitted to the arbitrator was whether there should be a reduction of wages in the defendant's plant which would offset the increase which had become effective on March 26, 1951. We concluded that the effect of the award as properly interpreted was to direct a reversion of the wage

structure, as it affected all employees except engravers, to what it was prior to March 26, 1951. The award, as corrected, accomplished this by directing that all hourly rates be reduced by 9.75 cents and that piece rates and plant hiring minimum rates be "adjusted accordingly."

The basic contention of the plaintiff in its motion to reargue is that, as interpreted by us, the award would result in a reduction of 9.75 cents an hour in the wages of the employees of the defendant who receive wages at the "plant minimum rate" or at the "hiring rate". That is not the interpretation we gave to the award.

It is obvious that the arbitrator did not consider that the plant minimum rates or the hiring rates were "hourly rates" as he used that term in ordering a 9.75 cent reduction in them. Had he considered that plant minimum rates or hiring rates were "hourly rates," it would not have been necessary or meaningful for him to have added to his order that hourly rates be reduced by 9.75 cents the direction that "plant hiring minimum rates" should be "adjusted accordingly". If he had intended that plant minimum rates or hiring rates should be treated as hourly rates and therefore be reduced by the full 9.75 cents per hour, his added direction that plant hiring minimum rates should be "adjusted accordingly" would have been superfluous. As was stated in the opinion, the only reasonable interpretation of the award in so far as it pertains to plant minimum rates and hiring rates is that they be reduced proportionately to the ordered reduction in hourly rates. That is, that plant minimum rates and hiring rates should be reduced by the same proportion of 9.75 cents per hour as the increase of them in 1951 bore to the then increase of 9.75 cents in the hourly rates. In other words, his award was that, to determine the amount of reduction to be made in plant minimum rates and hiring rates, the parties should apply to them in reverse the same formula whereby the parties had determined in 1951 that an increase of 9.75 cents in the hourly rates called for an increase of 5 and 6 cents per hour in the plant minimum and hiring rates respectively. It follows that the award of the arbitrator meant no more nor less than that the plant mini-

mum wage rate was to be reduced by 5 cents per hour and the hiring rate by 6 cents per hour. The motion to reargue, therefore, is based on an erroneous conception of the interpretation given to the award in the orginal opinion of the court.

In oral argument, counsel for the plaintiff contended that the award is impossible of application to any reduction in the rates for piecework. Although this contention is outside of the grounds set up in the motion to reargue, we have given it careful consideration. In this matter also, as was stated in the original opinion, the award is to be interpreted as directing the parties to arrive at the reduction to be made in piece rates by using in reverse the formula used to determined in 1951 the increase in those rates which would be proportionate to an increase of 9.75 cents in the hourly rates. It is true that the exact method whereby piece rates are determined does not appear in the record. It is apparent, however, that one consideration which is a factor in that determination is the amount the average pieceworker ought to be able to earn per hour. It does appear in the record that, when the wages of the hourly workers were increased by 9.75 cents per hour in 1951, in order to reach an approximate uniformity with that increase for the pieceworkers their base rates were increased in a manner designed to produce an average increase of 8.1 cents an hour. If, in so far as the hourly wages which could be made by pieceworkers was a factor in establishing piece rates, an increase of 8.1 cents an hour was determined as being the equivalent of an increase of 9.75 cents per hour for the hourly workers, a reduction of 8.1 cents per hour in that factor will be the equivalent of a reduction of 9.75 cents per hour for hourly workers. It is an adjustment such as this that is directed in the award, which orders that piece rates be "adjusted accordingly." It is, of course, true, as was further argued, that changes in the company's products and in the productivity of the workers which have come about since 1951 will make the fixing of piece rates in accordance with the award complicated and difficult. However, the same complications and difficulties would have been met if there had been no general increase in wages in 1951. By ordering that piece rates shall be "adjusted accordingly," i.e.,

proportionately to the reduction in the hourly rate, the award, in the nature of a declaratory judgment, establishes the principle that piece rates shall now be established by reverting to what they were before March 26, 1951, and, starting at that point, be refigured on the basis of time studies just as they would have been during the period since 1951 if there had been no general increase of wages throughout the plant in that year.

We see no occasion to make any change either in the opinion or in the rescript.

In this opinion WYNNE *and* MOLLOY, Js., concurred; O'SULLIVAN *and* DALY, Js., dissented (DALY, J., having heard the reargument, now desires to be recorded as dissenting from the original opinion and joining in the dissenting opinion). *Filed Nov. 9, 1954*

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 570

LOCAL 63
TEXTILE WORKERS UNION OF AMERICA, C. I. O.
Petitioner,

v.

CHENEY BROTHERS
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Question Presented

This case comes to this Court on the issue of whether the action of the Connecticut Supreme Court of Errors in determining that a labor arbitration award should be modified and confirmed under Conn. Gen. Stat., 1949, section 8162, rather than vacated under section 8161, constituted an invasion of petitioner's rights under the due process and equal protection clauses of Article XIV of the Amendments to the Constitution of the United States.

The circumstances under which the state court determination was reached are summarized in the following statement.

Statement

It appears from the record that in accordance with the collective bargaining agreement between the parties (Exh. A, secs. 5D, 5E, 12B(5), Finding, par. 20, R., pp. 25, 26) and after fruitless negotiation with petitioner (Finding, par. 25, R., p. 27), respondent submitted to arbitration the question of whether there should be "a direct wage decrease of 9¾ cents per hour for all employees covered by the current agreement, to offset the wage increase which became effective on March 26, 1951." *Id.*, par. 27, R., p. 28.

After a two-day hearing in which both parties participated without ever objecting to the arbitrator's jurisdiction (*Id.*, pars. 31, 34, R., pp. 28, 29) an award was rendered that beginning with a specified payroll period "all hourly rates and base rates shall be reduced by 9.75 cents. Piece rates and plant hiring minimum rates shall be adjusted accordingly." *Id.*, par. 36, R., p. 29.

The meaning of the terms "hourly rates," "base rates," "piece rates," "plant minimum rates," and "hiring minimum rates," as used in respondent's wage structure, was never explained to the arbitrator (*Id.*, par. 32, R., p. 28). The increase of March 26, 1951 had amounted to substantially 9.75 cents in the straight-time hourly earnings of all the employees affected (*Id.*, pars. 7, 17, R., pp. 24, 25), although plant minimum and hiring minimum rates had only been increased by 5 and 6 cents, respectively (*Id.*, pars. 14, 15, R., pp. 24, 25). On the other hand, the mathematical relationship between "base rates" and "piece rates," which was not known to the arbitrator, was such that a 9.75 cent reduction in base rates would produce an average reduction in piece-rate earnings per hour[1] of 11.7

[1] It should be borne in mind that the term "piece rate," standing alone, connotes not an hourly rate but rather the amount to be paid for performing a designated piece of work, regardless of how long it takes.

cents (*Id.*, par. 40, R., p. 29). As evidenced by his award and by the 22-page opinion (Exh. 3) to which it was stapled (Finding, par. 27, R., p. 29; see Opinion of Supreme Court of Errors), the arbitrator's whole purpose was solely to eliminate the 1951 general increase from respondent's wage structure, and no more.[2]

Confronted with the foregoing situation, and recognizing that the basic question originally submitted for arbitration was whether wages ought to revert to the 1951 level,[3] the Supreme Court of Errors modified the award by striking out the words "and base rates," construed it when thus modified as answering the question submitted in the affirmative,[4] and accordingly directed that it be confirmed.

Argument

Essentially the state courts here had to deal with the problem of what disposition to make of an award which, although drafted in such fashion as to permit a literalistic argument that it called for a greater wage reduction than the submission authorized, was nevertheless plainly meant to sanction only the decrease that had originally been requested. The parties presented various arguments. Petitioner claimed that the award was so vague and ambiguous that it lacked the finality and definiteness which the law demanded, and that in any case it could only be read as imposing more stringent reductions than respondent itself had asked. Respondent, on the other hand, urged that in the light of all the evidence the award could only be construed as responding to the submission, but that if in fact it did exceed the submission in any particular, the excess could readily be identified and separated without injustice, and the remainder, being wholly responsive to the original

[2] "He arrived at the basic conclusion that wages should revert to the March 1951 level." Superior Court Memorandum of Decision, R., p. 15. See also Exh. 3 at, e.g., page 22.

[3] See opinion of Supreme Court of Errors, reproduced in the petition for certiorari in this case, at p. 20.

[4] *Id.*, p. 21.

request, should be confirmed. In the end the courts sustained this last contention.

Here the mystery is: Where lies the constitutional question?

Petitioner appears to make two major claims. First, it is said (petition, pp. 12, 13) that the award was so wholly indefinite that the court's corrective action constituted "a holding that it has the power in any case, in its absolute discretion, to correct and interpret an award to conform to the submission"—a decision so drastic as actually to threaten "the entire structure of arbitration." To this it is perhaps sufficient answer to say (without attempting to examine in detail the permissible limits of state court action in construing written documents) that the award was really not that bad. On the entire record before the courts below its meaning was obvious. Nor was that record transcended by the ultimate decision. However, even if an error of law had been committed, it would scarcely follow that the limits protected by the Fourteenth Amendment had been invaded. It surely requires no citation to establish that this Court is not one of general appellate review. Fundamentally the petition for certiorari seeks just that. The effort is simply to gain a complete rehearing of every issue in the case in a new forum, under the guise that every issue is in fact a federal one.

Perhaps it is the weakness of this claim that leads petitioner to advance its second argument. Repeatedly the petition for certiorari suggests that in attempting to correct the award by authority of Conn. Gen. Stat., 1949, sec. 8162,[5] the court trespassed into regions to which the Connecticut legislature in enacting the statute had barred access. Here, it is said, was a correction affecting the merits of the dispute between the parties (which respondent denies), and one which the court made only by "ignoring its previous decisions that only technical corrections could be made under the statute,"[6] all of which was accomplished

[5] The material portions of the statute are reproduced in the petition for certiorari, pp. 7, 8.

without notice or warning of any kind to petitioner, whose constitutional rights hence were again infringed.

The fact is that there is only one "previous decisions" of the Supreme Court of Errors considering Section 8162. That case is *Pratt, Read & Co.* v. *United Furniture Workers,* 136 Conn. 205, 70 A. 2d 120 (1949), and it does not hold that the courts' power is limited to making "technical corrections." Its failure to do so is hardly surprising when one recalls that the statute itself prescribes that corrections shall be made "so as to effect the intent [of the award] and promote justice between the parties." What the *Pratt, Read* case does hold is that the statute is essentially procedural in nature, and that the substantive question of whether a particular correction should be made is one to be determined as a matter of common law. 136 Conn. at pp. 208, 209. Accordingly, the sole authority for the proposition that the legislature has limited the courts to technical corrections appears to consist of the petition for certiorari in this case.

Finally, petitioner seeks comfort from the opening paragraph of the dissenting opinion filed in the Supreme Court of Errors, which averred that the majority decision was "as stunning as it is incredible," and that legal principles carefully developed for over a century were being "summarily swept aside after receiving casual lip service." It is interesting to note that this paragraph of the dissenting opinion has been withdrawn and does not appear in the official reports of the case. 141 Conn. at p. 620, 109 A. 2d at p. 247.

This case has now been pending for over two years. It was fully tried in the Superior Court with ample opportunity to petitioner to offer whatever evidence it deemed material.[7] Thereafter elaborate briefs were filed with the

[6] Petition for certiorari, p. 3.

[7] To the suggestion in the petition for certiorari (p. 12) that the court may have erred simply because it acted without the record of the arbitration hearing before it, one may well answer that that record was excluded from evidence only because petitioner objected to its being admitted. Finding, par. 72, R., pp. 33-37.

trial court. An extensive finding, which petitioner had every opportunity to attack, was made (R., pp. 23-38) as basis for the appellate record. There was ample opportunity for briefs and argument in the Supreme Court of Errors. Motion for reargument was considered and granted in part. In this connection supplemental briefs were received, and at petitioner's request the court heard and considered during reargument matters plainly outside the original motion. See petition for certiorari, pp. 29, 30. Thus the final decision of the Supreme Court of Errors was reached only after the fullest, most elaborate consideration, as the culminating point in a procedure which had accorded to petitioner every safeguard known to the law of Connecticut. It is a fair decision. It harmonizes in all respects with the authorities. And, no less important, it does much to secure to the field of labor arbitration that flexibility and supremacy of substance over legalism and form which is essential if the device is to continue to fulfill its function of providing labor and management with an efficient, almost universally accepted means of resolving their differences without resorting to the economic anarchy of strikes and lockouts.

Conclusion

The petition for certiorari presents no federal question and should be denied.

Respectfully submitted,

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